



US Army Corps
of Engineers
Portland District

Special Public Notice

Programmatic ESA and EFH Consultation

for 15 Categories of Activities Requiring Department of the Army Permits

Issue Date: March 30, 2001

The purpose of this public notice is to announce that Portland District, U.S. Army Corps of Engineers (Corps) and National Marine Fisheries Service (NMFS) have completed a programmatic consultation for 15 categories of activities requiring Department of the Army permits. This consultation, which covers waters of the United States within the state of Oregon, complies with the provisions of Section 7 of the Endangered Species Act (ESA) and the Essential Fish Habitat (EFH) requirements of the Magnuson-Stevens Act of 1996.

Completion of this consultation eliminates the need for many individual ESA and EFH consultations on those permit applications submitted to Portland District which comply with the terms and conditions of the biological assessment issued by NMFS. This will facilitate the permit evaluation process, reducing the time required for evaluation of the permit application while assuring compliance with the requirements of the Endangered Species Act and the Magnuson-Stevens Act.

This consultation with NMFS covers anadromous fish species listed under ESA within the state of Oregon, and EFH for Pacific coast groundfish, coastal pelagic species, and chinook and coho salmon. Other fish, wildlife and plant species which are the responsibility of the U.S. Fish and Wildlife Service (USFWS) are not addressed by this consultation, but will be subject to individual consultation requirements. The Corps is coordinating with the Oregon State Office of the USFWS to develop an expedited consultation process. However, the large majority of consultations conducted by the Corps in Oregon are for the anadromous fish species covered by this consultation.

What is ESA and EFH consultation?

Section 7 of the Endangered Species Act requires that federal agencies such as the U.S. Army Corps of Engineers consult with NMFS and USFWS to ensure that any action authorized by the agency is not likely to jeopardize the continued existence of species listed as threatened or endangered or result in the destruction or adverse modification of critical habitat for those species. Under the Corps' permit program, permit applications are reviewed to determine any potential adverse effects on listed threatened and endangered species and their critical habitat. The Corps then consults with NMFS and/or USFWS, using formal or informal procedures, to evaluate the potential effects of the proposed work and any conservation measures which can be implemented to help protect the listed species and their habitat. A similar process is followed for consultation with NMFS under the Magnuson-Stevens Act for adverse effects on essential fish habitat for species covered by federal fishery management plans.

What is a programmatic consultation?

A programmatic consultation covers a range of actions proposed to be authorized by a federal agency such as the types of activities subject to the Corps' regulatory jurisdiction. Once a programmatic consultation is completed, case-by-case ESA and EFH consultations are no longer required for the specified activities as long as the terms and conditions of the programmatic consultation are met by the permittee.

Why is a programmatic consultation needed?

In recent years, fourteen species of anadromous fish found in Oregon rivers and streams have been listed under the Endangered Species Act as threatened or endangered. Nearly all anadromous fish streams within the state of Oregon have species that are listed under ESA. In addition, many streams in Oregon have been designated as essential fish habitat under the Magnuson-Stevens Act, triggering additional consultation requirements under the terms of that Act. The requirement for consultation for permits has resulted in a substantial increase in workload for both the Corps and NMFS, and increased delays for applicants in the processing of their permit applications.

What activities are addressed in this programmatic consultation?

This programmatic consultation covers 15 categories of activities:

1. erosion control
2. water control
3. utility lines
4. road construction, repairs and improvements
5. site preparation for construction of buildings and related features
6. stream and wetland restoration and enhancement
7. boat ramps
8. other minor discharges and excavations
9. installation and repair of navigational aids
10. maintenance of existing structures and marinas
11. installation of small temporary floats
12. structures in fleeting and anchorage areas
13. maintenance dredging
14. return water from upland contained disposal areas
15. fish and wildlife harvest, attraction devices and activities

Definitions of these categories of activities are included in this public notice as Attachment 1.

What are the requirements for a proposed action to be covered by the programmatic consultation?

To be covered by the programmatic consultation, a proposed action must:

1. Meet the requirements for authorization under a nationwide permit, letter of permission, or standard individual permit as stated in existing regulations.
2. Meet the terms and conditions contained in the programmatic biological opinion, including monitoring and reporting requirements.

What are the terms and conditions in the programmatic biological opinion?

The programmatic biological opinion issued by NMFS includes terms and conditions specific to each of the 15 types of activities listed above, as well general conditions applicable to all types of activities. The biological opinion, including the mandatory terms and conditions, are available on the Portland District website at <http://www.nwp.usace.army.mil/op/g>.

What does a permit applicant need to do to be covered by this consultation?

An applicant proposing to apply for a Department of the Army permit for one or more of these categories of activities should check the terms and conditions of the programmatic biological opinion to see if the proposed project falls within the limits of the programmatic consultation. A permit applicant can benefit from this programmatic consultation by reviewing its terms and conditions in advance of submitting a permit application to the Corps, and designing the proposed project to comply with those requirements. When an application for permit for that project is received by the Corps, it can be expeditiously processed without a need to further consult with NMFS. The terms and conditions of the programmatic consultation which are applicable to the proposed action will be included in the Corps permit as special conditions.

What if my project does not qualify for the programmatic consultation?

Permit applicants whose projects exceed the limits of the terms and conditions may apply to the Corps for permits as always, but individual consultation with NMFS will be required for ESA and EFH compliance. Individual consultations are time-consuming and can delay the Corps decision on the permit application. While not every project can be modified to meet the terms and conditions of the programmatic consultation, it is in the best interest of the applicant to consider configuring a proposed project to fit within those limits.

Who can I call if I have questions about a proposed project?

Your best source of information is the Portland District regulatory project manager who processes permit applications in the county in which your proposed action is located. A list of our regulatory project managers, their geographical areas of responsibility, and their phone numbers and email addresses can be found on our website at <http://www.nwp.usace.army.mil/op/g/contacts.html> or by calling the Regulatory Branch office at 503-808-4373.

Attachment 1:

**Programmatic ESA and EFH Consultation
for
15 Categories of Activities
Requiring Department of the Army Permits**

Portland District, U.S. Army Corps of Engineers, has completed a programmatic consultation with National Marine Fisheries Service (NMFS) for 15 categories of activities requiring Department of the Army permits. This consultation, which covers waters of the United States within the state of Oregon, complies with the provisions of Section 7 of the Endangered Species Act (ESA) and the Essential Fish Habitat (EFH) requirements of the Magnuson Stevens Act of 1996.

The following categories of activities are evaluated by the programmatic consultation. The biological opinion includes limitations on some of these categories, as noted below. In addition, the biological opinion specifies terms and conditions for each of the categories which must be met to qualify for coverage under this consultation. The biological opinion, including the mandatory terms and conditions, is available on the Portland District Regulatory website at . Printed copies may be requested by calling Regulatory Branch at 503-808-4373.

If a proposed action does not qualify for the categories described below, if it is specifically excluded from the biological opinion, or if it does not meet the terms and conditions of the biological opinion, an individual consultation will be required before a decision can be made on an application for permit.

1. Erosion Control Activities. Erosion control activities include the placement of material along or adjacent to banklines for the purpose of preventing erosion of the bank either by lining the face of the bank with a hard surface, by altering the face of the bank using bio-engineering methods, or by creating structures in the water to divert the current or to reduce the effects of wave action.

The programmatic biological opinion excludes erosion control activities that propose:

1. installation of rock or riprap intended to function as a bulkhead or revetment at a height above the toe of a slope (the break in slope at the foot of a bank where the bank meets the bed); and
2. placement of more than ten cubic yards of rock or riprap per 100 linear feet of bankline in a trench at the toe of a slope or in a scour hole.

The programmatic biological opinion encourages the use of bioengineering practices to control streambank erosion. "Bioengineering" means the use of live and dead plant materials to stabilize hill slopes, streambanks or shorelines. Examples include fascines, bundles, logs, and root wads that are often used in conjunction with soil or other hard structures such as rocks, boulders or wood crib structures. The biological opinion states that the conservation goal of erosion control activities covered by this consultation is to provide the greatest degree of natural habitat function that is economically achievable through the application of an ecological approach to bank protection and the best available bioengineering practices, technologies, processes, siting criteria, operating methods, or other alternatives.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

2. Water Control Activities. Water control activities include the placement of material on the bankline and/or in the stream to control the flow of water for the purpose of preventing or reducing the risk of flooding, or to maintain drainage.

The programmatic biological opinion excludes water control activities that:

1. impair connectivity between off-channel areas, wetlands, and the main channel; or
2. include the installation of any new dike, levee, tide gate, pump station, or related facility in any of the following areas:
 - a. adjacent to, or upstream of, freshwater spawning areas
 - b. waters on the DEQ 303(d) list for temperature, flow modification, or habitat modification; or
 - c. tidal marshes or estuaries, except to maintain or improve existing tide gates.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

3. Utility Lines. A utility line is any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, and any cable, line, or wire for the transmission of electricity or communication. Utility line construction or repair could involve excavation, temporary sidecasting of excavated material, placement of pipeline or cable in the trench, backfilling of the trench, and restoration of the work site to pre-construction contours and vegetation.

The programmatic biological opinion excludes utility line activities that propose:

1. construction of any new permanent roads within the riparian zone;
2. use of open trench excavation in running water;
3. temporary stream diversion; or
4. placement of a utility line above the bed of marine waters at depths less than -10.0 feet of the mean lower low water (MLLW).

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

4. Road Construction, Repairs, and Improvements. This category includes new highway construction, improvement of an existing roadway, and replacement of culverts. Actions could involve excavation, grading, filling, placement of culverts, construction of bridges, and construction of drainage features.

The programmatic biological opinion does not include activities which propose:

1. construction of a new, permanent road within 150 feet of a stream or water body that is occupied by listed salmonids during any part of the year;
2. construction of a new, permanent road within 50 feet of a stream or water body that is not occupied by listed salmonids but discharges into a stream that is occupied;
3. construction of a new bridge pier or abutment below the bankfull elevation; or
4. an increase in new impervious surface exceeding 0.5 acres.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

5. Site Preparation for Construction of Buildings and Related Features. This category includes preparation of a site for construction of any type of building, as well as fills for driveways, parking areas, garages, storage and utility buildings, etc. which are related to the purpose of the primary structure.

The programmatic biological opinion excludes:

1. site preparation within 150 feet of a stream or water body that is occupied by listed salmonids during any part of the year; or
2. site preparation within 50 feet of a stream or water body that is not occupied by listed salmonids but discharges into a stream that is occupied.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

6. Stream and Wetland Restoration and Enhancement. This category may include installation, removal and maintenance of small water control structures, dikes, and berms; installation of current deflectors; enhancement, restoration or creation of riffle and pool stream structure; placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; removal of existing drainage structures; construction of small nesting islands; construction of open water areas; activities needed to reestablish vegetation; and other activities as described in Nationwide Permit 27, Stream and Wetland Restoration Activities.

The programmatic biological opinion excludes stream and wetland restoration activities until the State of Oregon completes NMFS-approved state guidelines to certify watershed conservation plans. Thereafter, the programmatic biological opinion will cover only those restoration projects that are part of, and conducted pursuant to, a watershed conservation plan that the State of Oregon has certified using those guidelines.

7. Boat Ramps. Construction of boat ramps may include excavation, grading, and placement of poured or pre-cast concrete, and the construction of related features including docks, floats and piers.

The programmatic biological opinion excludes:

1. access walkways, docks and related features wider than eight feet;
2. covered moorages;
3. ramps and related features in an estuary that will displace submerged aquatic vegetation as determined by a pre-construction survey;
4. use of treated wood or piles for any structure; or
5. any increase in impervious surface exceeding 0.5 acres.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

8. Other Minor Discharges and Excavations. This category includes minor discharges and excavations such as small structural fills, minor excavations or dredging such as that necessary for culvert maintenance, installation of outfall structures and minor repairs of previously authorized structures or fills.

The programmatic biological opinion excludes any minor discharge or excavation that proposes stream diversion during construction.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

9. Installation and Repair of Navigational Aids. Activities under this category include the placement of permanent and temporary navigational aids such as mooring buoys and channel markers.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for the terms and conditions which apply to this category.

10. Maintenance of Existing Structures and Marinas. This category includes the maintenance, repair and relocation of existing structures within an authorized marina.

The programmatic biological opinion excludes:

1. the use of treated wood or piles; or
2. an increase in new impervious surface exceeding 0.5 acres.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

11. Installation Of Small Temporary Floats. This category includes temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal.

The programmatic biological opinion excludes:

1. installation of floats in areas with submerged vegetation;
2. floating storage units or boat houses; or
3. deployment of a temporary float for longer than 21 days.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

12. Structures In Fleeting And Anchorage Areas. This category includes buoys, floats and other devices placed within anchorage or fleeting areas to facilitate storage of vessels where such areas have been established for that purpose by the U.S. Coast Guard.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for the terms and conditions which apply to this category.

13. Maintenance Dredging. This category includes maintenance dredging of existing marinas to maintain the authorized depth for ingress and egress.

The programmatic biological opinion excludes any dredging activity that:

1. is for the purpose of flood control or gravel extraction;
2. is located adjacent to, or upstream of, salmonid spawning habitat;
3. is scheduled outside the in-water work periods stated in the biological opinion;
4. is associated with the following:
 - a. stream diversion
 - b. sediment that does not meet criteria for in-water disposal;
 - c. use of the economic loading method for hopper dredging; or
5. is likely to have a significant adverse effect on:
 - a. estuarine or marine benthic invertebrate species composition and productivity;
 - b. water quality (for example, long-term increase in turbidity or toxics such as hydrogen sulfide, methane or organic acids); or
 - c. channel morphology (for example, side channel isolation, disruption of instream gravel transport, or a decrease in channel stability such as head cutting, channel incision, channel widening.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> for other terms and conditions which apply to this category.

14. Return Water from Upland Contained Disposal Areas. This category includes return water from an upland, contained dredged material disposal area.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g> for the terms and conditions which apply to this category.

15. Fish and Wildlife Harvest, Attraction Devices and Activities. This category includes the installation and use of fish and wildlife harvesting devices and activities.

The programmatic biological opinion excludes:

1. the following types of mariculture:
 - a. non-native species
 - b. shellfish and prey species over eelgrass beds
 - c. benthic culture methods
 - d. kelp harvest
2. the following types of habitat manipulation:
 - a. enclosure or impoundment of any tidally influenced wetlands
 - b. significant alteration of areas of “high productivity” as determined by pre-operational sampling developed with input from state and Federal resource agencies
 - c. direct application of carbaryl or other pesticides.

Refer to the biological opinion at <http://www.nwp.usace.army.mil/op/g/> or other terms and conditions which apply to this category.